

By: Capriglione

H.B. No. 3169

Substitute the following for H.B. No. 3169:

By: Dean

C.S.H.B. No. 3169

A BILL TO BE ENTITLED

AN ACT

relating to the operation and administration of the Texas Bullion Depository, to depository agents, to the appropriation of money from the fees, charges, penalties, and other amounts related to the depository and deposited to the general revenue fund for that purpose, and to the provision of a related ad valorem tax exemption.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 2116.001(4), (9), and (10), Government Code, are amended to read as follows:

(4) "Deposit" means the establishment of an executory obligation of the depository to deliver to the order of the person establishing with the depository the obligation, on demand, a quantity of a specified precious metal, in bullion, specie, or other physical form [~~a combination of bullion and specie~~], equal to the quantity of the same precious metal delivered by or on behalf of the depositor into the custody of:

(A) the depository; or

(B) a depository agent.

(9) "Depository agent" means a person licensed in accordance with this chapter to serve as an agent on behalf of a current or prospective [~~intermediary between the~~] depository account holder [~~and a retail customer~~] in making a retail transaction in precious metals bullion or specie.

(10) "Precious metal" means a metal, including gold,

1 silver, and platinum group metals, including platinum, palladium,
2 ruthenium, osmium, iridium, and rhodium, that:

3 (A) bears a high value-to-weight ratio relative
4 to common industrial metals; and

5 (B) may be ~~[customarily is]~~ formed into bullion,
6 ~~[or]~~ specie, or other physical form.

7 SECTION 2. Section [2116.002](#), Government Code, is amended by
8 amending Subsection (a) and adding Subsections (c) through (i) to
9 read as follows:

10 (a) The Texas Bullion Depository is established as a program
11 ~~[an agency of this state]~~ in the office of the comptroller to
12 provide a bullion depository and services for the public benefit.

13 (c) The depository may establish and operate one or more
14 branch locations of the depository. Branch locations of the
15 depository are considered to be part of the depository.

16 (d) The depository may enter into contracts, as the
17 comptroller determines to be prudent and suitable, to facilitate
18 the operations of the depository and further the purposes of this
19 chapter.

20 (e) This state and the comptroller may not be held liable
21 for the depository or related activities of the depository. This
22 chapter may not be construed as creating financial or other
23 responsibilities for the depository to the state or to the
24 comptroller. This state does not pledge the full faith and credit
25 of this state for the benefit of the depository.

26 (f) Notwithstanding Chapter [2113](#), the depository may enter
27 into contracts and engage in marketing, the sale of promotional

1 items, advertising, and other activities to promote, market, and
2 advertise the depository. The comptroller may use appropriated
3 funds to pay for activities of the depository authorized under this
4 section.

5 (g) Notwithstanding any other provision of law, the
6 depository may enter into contracts for the design, manufacture,
7 marketing, and distribution of official commemorative items,
8 including coins or other items containing precious metal, to
9 promote, market, and advertise the depository. The depository shall
10 establish the purchase price for any commemorative items. The
11 comptroller may use appropriated funds to pay for depository
12 activities authorized by this subsection.

13 (h) The depository shall deposit any funds received from the
14 sale of commemorative items described by Subsection (g) to the
15 credit of the general revenue fund. Money deposited to the general
16 revenue fund under this subsection may be appropriated to the
17 comptroller to offset the costs of the implementation,
18 administration, promotion, marketing, advertising, and operation
19 of the depository.

20 (i) The comptroller may adopt rules necessary to implement
21 this chapter.

22 SECTION 3. Section [2116.003](#), Government Code, is amended to
23 read as follows:

24 Sec. 2116.003. DEPOSITORY ADMINISTRATION; ADMINISTRATOR.

25 (a) The depository is administered as a program ~~[division]~~ of the
26 office of the comptroller and under the direction and supervision
27 of a bullion depository administrator appointed by the comptroller

1 ~~[with the advice and consent of the governor, lieutenant governor,~~
2 ~~and senate]~~.

3 (b) The administrator shall:

4 (1) administer, supervise, and direct the operations
5 and affairs of the depository and liaise with depository agents;
6 and

7 (2) liaise with the comptroller and other divisions of
8 the office of the comptroller to ensure that each transaction with
9 the depository that involves state money, that involves an agency,
10 a political subdivision, or another instrumentality of this state,
11 or that involves a private person is planned, administered, and
12 executed in a manner to achieve the purposes of this chapter.

13 (c) The administrator may appoint, subject to the approval
14 of the comptroller, a deputy administrator or other subordinate
15 officer or may employ staff as necessary and appropriate to the
16 efficient administration of the depository.

17 SECTION 4. Sections [2116.004](#)(a) and (b), Government Code,
18 are amended to read as follows:

19 (a) The following are not available for legislative
20 appropriation:

21 (1) a deposit to the depository;
22 (2) precious metal ~~[bullion or specie]~~ held by or on
23 behalf of the depository or a depository agent;

24 (3) precious metal ~~[bullion or specie]~~ in transit to
25 or from the depository or a depository agent; and

26 (4) a receivable or other amount owed to the
27 depository in settlement of a transaction in precious metal

1 ~~[bullion or specie]~~.

2 (b) Precious metal ~~[Bullion, specie,]~~ and other assets
3 described by Subsection (a) are subject to redemption, liquidation,
4 or transfer exclusively to discharge an obligation of the
5 depository to depository account holders, depository agents,
6 bullion banks, financial institutions, or other intermediaries in
7 accordance with this chapter and rules adopted under this chapter.

8 SECTION 5. Section [2116.005](#), Government Code, is amended by
9 amending Subsections (a), (c), and (d) and adding Subsections (a-1)
10 and (f) to read as follows:

11 (a) The depository may receive a deposit of precious metal
12 ~~[bullion or specie]~~ from or on behalf of a person acting in the
13 person's own right, as trustee, or in another fiduciary capacity,
14 in accordance with rules adopted by the comptroller as appropriate
15 to:

- 16 (1) ensure compliance with law; and
17 (2) protect the interests of:
18 (A) the depository;
19 (B) depository account holders;
20 (C) this state and the agencies, political
21 subdivisions, and instrumentalities of this state; and
22 (D) the public at large.

23 (a-1) The comptroller shall develop standards and processes
24 for the shipping, handling, and deposit of precious metals to the
25 depository to ensure the integrity of and verify any precious
26 metals shipped to the depository for deposit.

27 (c) The comptroller ~~[by rule]~~ shall develop ~~[adopt]~~

standards by which the quantities of precious metals deposited are credited to a depositor's depository account by reference to the particular form in which the metals were deposited, classified by mint, denomination, weight, assay mark, or other indicator, as applicable. The standards must conform to applicable national and international standards of weights and measures.

(d) The comptroller ~~[by rule]~~ may, if the comptroller determines that to do so is in the public interest, restrict the forms in which deposits of precious metals may be made to those forms that conveniently lend themselves to measurement and accounting in units of troy ounces and standardized fractions of troy ounces.

(f) A depository agent or other person who is acting on behalf of an account holder or who is holding the deposits or funds of an account holder may not commingle any deposits or funds belonging to the depository agent or other person with the deposits or funds of the account holder.

SECTION 6. Section 2116.006(b), Government Code, is amended to read as follows:

(b) The depository shall make a delivery described by Subsection (a) on demand by the presentment of a written demand ~~[suitable check, draft,]~~ or digital electronic instruction to the depository or a depository agent. The comptroller ~~[by rule]~~ shall develop ~~[adopt]~~ the forms, standards, and processes through which an order for delivery on demand may be made, presented, and honored.

SECTION 7. Section 2116.007, Government Code, is amended to read as follows:

1 Sec. 2116.007. TRANSFER OF DEPOSITORY ACCOUNT BALANCE. (a)
2 The comptroller shall develop forms, standards, and processes by
3 which [~~In accordance with rules adopted under this chapter,~~] a
4 depository account holder may transfer any portion of the balance
5 of the holder's depository account by written demand [~~check,~~
6 ~~draft,~~] or digital electronic instruction to another depository
7 account holder or to a person who at the time the transfer is
8 initiated is not a depository account holder.

9 (b) The depository shall adjust the depository account
10 balances of the depository accounts to reflect a transfer
11 transaction between depository account holders on presentment of
12 the written demand [~~check, draft,~~] or digital electronic [~~other~~]
13 instruction by reducing the payor's depository account balance and
14 increasing the depository account balance of the payee accordingly.

15 (c) If a depository account holder transfers to a payee who
16 is not a depository account holder any portion of the balance of the
17 holder's depository account, the depository may [~~shall~~] allow the
18 payee to establish a depository account by presentment of the
19 payor's written demand [~~check, draft,~~] or digital electronic
20 instruction to the depository or to a depository agent. The
21 depository shall credit a newly established account on behalf of
22 the payee and shall debit the payor's account accordingly.

23 SECTION 8. Section [2116.008\(b\)](#), Government Code, is amended
24 to read as follows:

25 (b) The execution of a contract for a depository account
26 described by this section may be made [~~as prescribed by rules~~
27 ~~adopted under this chapter,~~] by electronic or digital transmission.

SECTION 9. The heading to Section 2116.009, Government Code, is amended to read as follows:

Sec. 2116.009. ACCOUNT BALANCES [~~CAUSE OF ACTION FOR DENIAL OF DEPOSIT LIABILITY~~].

SECTION 10. Section 2116.009, Government Code, is amended by amending Subsection (b) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(b) The depository shall furnish depository account holders with [~~depository's act of furnishing~~] an account statement or passbook, whether in physical, digital, or electronic form[~~, constitutes a denial of liability and the giving of such notice as to any amount not shown on the statement or passbook~~].

(b-1) The depository account holder is responsible for:

(1) promptly examining each account statement received from the depository; and

(2) giving notice of any discrepancy in the account statement to the depository within the time frame established by the comptroller.

(b-2) If a depository account holder does not report an account balance discrepancy reflected on the account holder's account statement or passbook in the appropriate time period described by Subsection (b-1):

(1) the account holder is considered to have accepted as accurate the account statement or passbook; and

(2) the depository account statement or passbook is considered to be accurate.

(b-3) For purposes of this section, "account statement"

1 means a depository account holder's daily account balance, accessed
2 through the Internet website designated by the depository for that
3 purpose.

4 SECTION 11. Section 2116.010, Government Code, is amended
5 to read as follows:

6 Sec. 2116.010. FEES; SERVICE CHARGES; PAYMENTS; PENALTIES.

7 (a) The comptroller [~~by rule~~] may establish fees, service charges,
8 and penalties to be charged a depository account holder for a
9 service or activity regarding a depository account, including a fee
10 for an overdraft, an insufficient fund check or draft, or a stop
11 payment order.

12 (b) The comptroller may establish other fees and charges and
13 receive payments in the course of depository operations and
14 activities authorized by this chapter, including from transactions
15 and relationships authorized by Section 2116.021.

16 (c) The comptroller shall deposit revenue realized by the
17 depository under this section to the credit of the general revenue
18 fund.

19 (d) Money credited to the general revenue fund under this
20 section may be appropriated to the comptroller to offset the costs
21 of implementation, administration, promotion, marketing,
22 advertising, and operation of the depository.

23 SECTION 12. Section 2116.013, Government Code, is amended
24 to read as follows:

25 Sec. 2116.013. DEPOSITORY ACCOUNTS NOT INTEREST-BEARING.

26 The depository may not pay on a depository account or on any funds
27 held on behalf of a depository account holder:

(1) interest;

(2) an amount in the nature of interest; or

(3) a fee or other payment for the use or forbearance of use of money, bullion, specie, or precious metals deposited to a depository account.

SECTION 13. Subchapter A, Chapter 2116, Government Code, is amended by adding Section 2116.0145 to read as follows:

Sec. 2116.0145. EXEMPTION FROM CREDITORS' CLAIMS. (a) Deposits of bullion or specie held in the depository in accordance with this chapter are exempt from claims of creditors, including claims of creditors of a depository account holder or a successor in interest of a depository account holder.

(b) Except as provided by Subsection (c), the rights of a depository account holder in regard to any deposits of bullion or specie held in the depository are exempt from attachment, levy, garnishment, execution, and seizure for the satisfaction of any debt, judgment, or claim against a depository account holder or successor in interest of a depository account holder.

(c) This section does not apply to the claim of a creditor of a depository account holder or a successor in interest of a depository account holder for a debt, judgment, lien, or claim, including a tax delinquency, asserted by or owed to:

(1) the state;

(2) a person who has perfected a pledge made under Section 2116.014(d); or

(3) a person who is owed child support arrearages by the depository account holder, reflected in a child support lien

1 notice that complies with the requirements of Section 157.313,
2 Family Code.

3 (d) The depository may take any necessary and appropriate
4 action to effectuate the transfer of a depository account, or all or
5 part of a depository account balance, to a creditor with a claim
6 described by Subsection (c).

7 (e) This section does not permit a debtor to exempt bullion
8 or specie held in a depository account from property of the estate
9 in a bankruptcy proceeding.

10 SECTION 14. Section 2116.021, Government Code, is amended
11 to read as follows:

12 Sec. 2116.021. TRANSACTIONS AND RELATIONSHIPS. The
13 depository may ~~[shall]~~ enter into transactions and relationships
14 with bullion banks, depositories, dealers, central banks, banks
15 approved by the Internal Revenue Service or non-banks acting as
16 custodians for individual retirement accounts, sovereign wealth
17 funds, financial institutions, precious metals exchanges,
18 international nongovernmental organizations, intermediaries, and
19 other persons, located inside or outside of this state or inside or
20 outside of the United States, as the comptroller determines to be
21 prudent and suitable to facilitate the operations of the depository
22 and to further the purposes of this chapter.

23 SECTION 15. Section 2116.023, Government Code, is amended
24 by amending Subsection (c) and adding Subsection (d) to read as
25 follows:

26 (c) On receipt of notice of any transaction described by
27 Subsection (a), with respect to all or any portion of the balance of

1 a depository account, and on direction of the attorney general, the
 2 depository shall suspend withdrawal privileges associated with the
 3 balances of the depository account until suitable substitute
 4 arrangements may be effected in accordance with the representation
 5 of the depository by the attorney general and rules of the
 6 comptroller to enable the registered account holder to take
 7 delivery of the precious metals represented by the account balances
 8 in question. A voluntary transfer of a depository account balance
 9 or of a depository account among depository account holders may
 10 continue to take place unaffected by the suspension, and the
 11 depository shall recognize the transfer to the full extent
 12 authorized by this chapter, the representation of the depository by
 13 the attorney general, and rules adopted under this chapter.

14 (d) On receipt of notice of any transaction described by
 15 Subsection (a), the depository shall refer the notice to the
 16 attorney general for representation, and the attorney general shall
 17 represent the depository in any matter described by Subsection (a).

18 SECTION 16. Section 2116.024, Government Code, is amended
 19 to read as follows:

20 Sec. 2116.024. OFFICIAL EXCHANGE RATES. The comptroller
 21 ~~[by rule]~~ shall establish the references by which the official
 22 exchange rate for pricing precious metals transactions in terms of
 23 United States dollars or other currency must be established at the
 24 time of a depository transaction. The comptroller shall establish
 25 procedures and facilities through which the rates are made
 26 discoverable at all reasonable times by system participants, both
 27 on a real-time basis and retrospectively.

SECTION 17. Section 2116.025, Government Code, is amended to read as follows:

Sec. 2116.025. FACILITATION OF ACCOUNTING AND REPORTING OF TAXABLE GAINS. The comptroller ~~[by rule]~~ shall establish procedures and requirements for the depository and depository agents designed to minimize the burden to system participants of accounting for and reporting taxable gains and losses arising out of depository transactions as denominated in United States dollars or another currency.

SECTION 18. Subchapter A, Chapter 2116, Government Code, is amended by adding Sections 2116.027, 2116.028, and 2116.029 to read as follows:

Sec. 2116.027. CONFIDENTIALITY OF RECORDS. (a) Except as otherwise provided by Section 2116.028 and this section, the depository's records are subject to public inspection to the extent authorized by Chapter 552.

(b) The following information is confidential and is exempt from disclosure under Chapter 552:

(1) records and information related to the depository's physical security, information security, or information designed to ensure the integrity and security of the depository, including:

(A) access codes;

(B) passwords;

(C) signatures;

(D) specifications;

(E) technical details;

1 (F) operating procedures;
2 (G) locations; and
3 (H) financial information on expenditures for
4 depository security;

5 (2) records relating to individual accounts or to
6 current or prospective depository account holders that are in the
7 custody of the depository or in the custody of a vendor performing
8 services related to the depository;

9 (3) records related to setting depository fees,
10 service charges, penalties, or other charges or payments;

11 (4) records related to establishing standards under
12 Sections [2116.005](#)(c) and (d); and

13 (5) operational information, or other information,
14 that would give advantage to competitors or bidders.

15 (c) Notwithstanding Subsection (b)(2), depository account
16 information may be disclosed:

17 (1) to a depository account holder regarding the
18 depository account holder's account;

19 (2) to a state or federal agency as necessary to
20 administer the program or as required by applicable law;

21 (3) to a vendor providing services to the depository
22 or to a current or prospective depository account holder;

23 (4) in response to a subpoena issued under applicable
24 law;

25 (5) if compiled as collective information that does
26 not include any identifying information about a person; or

27 (6) with the express written permission of a

depository account holder.

Sec. 2116.028. INTELLECTUAL PROPERTY. (a) The depository may:

(1) apply for, register, secure, hold, and protect under the laws of the United States or any state or nation:

(A) a patent for the invention, discovery, or improvement of any process, machine, manufacture, or composition of matter;

(B) a copyright for an original work of authorship fixed in any tangible medium of expression, known or later developed, from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device;

(C) a trademark, service mark, collective mark, or certification mark for a word, name, symbol, device, or slogan that the depository uses to identify and distinguish the depository's goods and services from other goods and services; or

(D) other evidence of protection or exclusivity issued for intellectual property;

(2) contract with a person for the reproduction, public performance, display, distribution, advertising, sale, lease, marketing, licensing, sale, use, or other distribution of the depository's intellectual property;

(3) obtain under a contract described in Subdivision (2) a royalty, license right, or other appropriate means of securing reasonable compensation for the exercise of the depository's intellectual property rights; and

1 (4) waive or reduce the amount of compensation secured
2 by contract under Subdivision (3) if the depository determines that
3 the waiver or reduction will:

4 (A) further a goal or mission of the depository;
5 and

6 (B) result in a net benefit to the depository.

7 (b) Intellectual property of the depository is excepted
8 from required disclosure under Chapter 552:

9 (1) beginning on the date the depository decides to
10 seek a patent, trademark, service mark, collective mark,
11 certification mark, or other evidence of protection of exclusivity
12 concerning the property; and

13 (2) ending on the date the depository receives a
14 decision on the depository's application for a patent, trademark,
15 service mark, collective mark, certification mark, or other
16 evidence of protection of exclusivity concerning the property.

17 (c) The comptroller shall deposit to the credit of the
18 general revenue fund revenue realized by the depository under this
19 section.

20 (d) Money credited to the general revenue fund under this
21 section may be appropriated to the comptroller to offset the costs
22 of implementation, administration, promotion, marketing,
23 advertising, and operation of the depository.

24 (e) The comptroller may establish intellectual property
25 policies.

26 Sec. 2116.029. ADVERTISING, SIGNAGE, AND DISCLOSURES BY
27 THIRD PARTIES. (a) In this section, "third party" means a person

1 who is authorized to provide a service relating to the depository,
2 including a depository agent, a person who enters into a
3 transactional or other relationship with the depository, or a
4 person selected to operate or provide services to the depository
5 under this chapter.

6 (b) Third party advertising, marketing, promotional or
7 written material, or signage created or used for commercial
8 purposes related to the depository, in written form or in any other
9 form, may not be used until the comptroller has approved its use.

10 (c) The comptroller may require that a third party who
11 creates advertising, marketing, promotional or written material,
12 or signage created or used for commercial purposes related to the
13 depository include certain approved disclosures or identifying
14 marks, as the commissioner determines to be appropriate, in the
15 entity's advertising, marketing, promotional or written material,
16 or signage.

17 SECTION 19. Section 2116.051, Government Code, is amended
18 to read as follows:

19 Sec. 2116.051. USE OF DEPOSITORY AGENTS. Current and
20 prospective ~~[The]~~ depository account holders may ~~[shall]~~ use
21 private, independently managed firms and institutions licensed as
22 depository agents ~~[as intermediaries]~~ to conduct ~~[retail]~~
23 transactions in bullion and specie on behalf of ~~[the depository~~
24 ~~with]~~ current and prospective depository account holders.

25 SECTION 20. Section 2116.052, Government Code, is amended
26 to read as follows:

27 Sec. 2116.052. ELECTRONIC INFORMATION SHARING SYSTEMS AND

1 PROCESSES. A [~~The comptroller by rule shall require a~~] depository
2 agent shall [~~to~~] maintain suitable systems and processes for
3 electronic information sharing and communication with the
4 comptroller and the depository to ensure that all transactions
5 effected on behalf of current and prospective [~~the~~] depository
6 account holders are reported to and integrated into the
7 depository's records not later than 11:59:59 p.m. on the date of
8 each transaction.

9 SECTION 21. Section 151.002(b)(9-c), Finance Code, is
10 amended to read as follows:

11 (9-c) "Depository agent services" means services
12 rendered [~~to the general public~~] for or on behalf of current or
13 prospective depository account holders of the Texas Bullion
14 Depository in the nature of purchasing, selling, transferring,
15 accepting, transporting, delivering, or otherwise dealing in
16 precious metals bullion or specie in connection with the creation,
17 transfer, clearing, settlement, or liquidation of the rights and
18 interests of a depository account holder and a direct or indirect
19 transferee of a depository account holder, as those terms are
20 defined by Subchapter J. The term "depository agent services" does
21 not include:

22 (A) participation as a party or counterparty to a
23 transaction, including an agreement with respect to a transaction,
24 in or in connection with a contract for the purchase or sale of a
25 person's rights and interests as a depository account holder, as a
26 cash contract for present delivery, a cash contract for deferred
27 shipment or delivery, or a contract for future delivery, where the

underlying deliverable consists of the depository account holder's interest in the depository account, rather than the underlying precious metal represented by the depository account balance;

(B) the opening, transfer, settlement, or liquidation of any derivative of a contract described by Paragraph (A), including a forward transaction, swap transaction, currency transaction, future transaction, index transaction, or option on or other derivative of a transaction of any of those types, in the nature of a cap transaction, floor transaction, collar transaction, repurchase transaction, reverse repurchase transaction, buy-and-sell-back transaction, securities lending transaction, or other financial instrument or interest, including an option with respect to a transaction, or any combination of these transactions; or

(C) the rendition of services exclusively in support of the opening, transfer, settlement, or liquidation of transaction derivatives described by Paragraph (B) through a central counterparty, such as those customarily rendered by a clearinghouse, clearing association, or clearing corporation, or through an interbank payment system, physical or electronic trading facility, broker or brokerage firm, or similar entity, facility, system, or organization.

SECTION 22. Subchapter J, Chapter 151, Finance Code, is amended by adding Section 151.8521 to read as follows:

Sec. 151.8521. LICENSE CATEGORIES; EXEMPTIONS FROM LICENSING. (a) The commissioner, in consultation with and subject to approval by the comptroller, shall create defined categories of

1 licenses for depository agents, with specific application
2 requirements for each different category of license. The licensing
3 categories created under this subsection may be differentiated on
4 the basis of the type and value of authorized precious metal
5 transactions for a depository agent in each category.

6 (b) Requirements for each category of depository agent
7 license created under Subsection (a) may differ on the basis of:

- 8 (1) capital and security requirements;
9 (2) insurance requirements;
10 (3) type of depository agent services provided;
11 (4) availability of safe and secure storage and
12 transport of precious metals;
13 (5) other licensing requirements; or
14 (6) qualifications, as appropriate, to fulfill the
15 requirements of Chapter 2116, Government Code.

16 (c) In adopting application requirements for the depository
17 agent license categories created by the commissioner under
18 Subsection (a), the commissioner shall ensure that the
19 requirements, including any licensing fees, enable qualified
20 individuals and firms to apply for a license and provide for the
21 safety and security of depository account holders and the
22 depository.

23 (d) The commissioner, in consultation with and subject to
24 the approval of the comptroller, shall determine whether any
25 person, transaction, or class of persons is exempt from depository
26 agent licensing under Section 151.003(10).

27 SECTION 23. Section 151.853(a), Finance Code, is amended to

1 read as follows:

2 (a) A person may not engage in the business of rendering
3 depository agent services or advertise, solicit, or hold itself out
4 as a person that engages in the business of depository agent
5 services unless the person:

6 (1) is licensed under this subchapter ~~[and has~~
7 ~~received the requisite certifications from the comptroller of its~~
8 ~~facilities, systems, processes, and procedures as required by~~
9 ~~Chapter 2116, Government Code, or rules adopted under that~~
10 ~~chapter]~~; or

11 (2) is excluded from licensing requirements under
12 Section 151.003, or as otherwise determined under Section
13 151.8521(d).

14 SECTION 24. Section 151.855, Finance Code, is amended to
15 read as follows:

16 Sec. 151.855. APPLICATION AND ACCOMPANYING FEE,
17 STATEMENTS, AND SECURITY. (a) An applicant for a depository agent
18 license must submit an application in accordance with Section
19 151.203 and applicable requirements adopted under Section
20 151.8521.

21 (b) At the time an application for a depository agent
22 license is submitted, an applicant must file with the department
23 any fee, information, documentation, or security required as
24 provided by Section 151.8521 for the category of license for which
25 the person is applying, which may include:

26 (1) an application fee in the amount established by
27 commission rule;

1 (2) audited financial statements and other financial
2 documentation that is determined to be reliable that are
3 satisfactory to the commissioner for purposes of determining
4 whether the applicant has the minimum net worth required under
5 applicable rules and is likely to maintain the required minimum net
6 worth if a license is issued; ~~and~~

7 (3) security in an ~~[the]~~ amount not to exceed ~~[of]~~
8 \$500,000 that meets the requirements of applicable rules and an
9 undertaking or agreement that the applicant will increase or
10 supplement the security to equal the aggregate security required by
11 the commissioner before the issuance of the license and the start of
12 operations; and

13 (4) additional security that may be required by the
14 commissioner in the form of permissible investments, additional
15 surety, or in any other form considered appropriate to protect
16 depository account holders and the depository and to comply with
17 applicable regulatory requirements.

18 (c) The commissioner may adopt rules to implement
19 Subsection (b)(4).

20 SECTION 25. Section 151.858, Finance Code, is amended to
21 read as follows:

22 Sec. 151.858. LIABILITY OF LICENSE HOLDER. A depository
23 agent license holder is liable for the delivery to or for the
24 depository account of ~~[the depository or]~~ each depositor, as
25 applicable, of all bullion, specie, and money payable or
26 deliverable in connection with the transactions in which the
27 license holder engages on behalf of the depositor ~~[depository]~~.

SECTION 26. The heading to Section 151.860, Finance Code, is amended to read as follows:

Sec. 151.860. DISCLOSURE AND OTHER REQUIREMENTS.

SECTION 27. Section 151.860, Finance Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) A depository agent license holder must comply with the requirements of Section 2116.029, Government Code.

(d) The commissioner, in consultation with the comptroller, shall adopt processes and procedures for interactions between a depository agent license holder and a depository account holder to ensure compliance with this chapter, Chapter 2116, Government Code, and other applicable regulatory requirements.

(e) A depository agent license holder or other person who is acting on behalf of an account holder may not commingle deposits or funds belonging to the depository agent or other person with the deposits or funds of a depository account holder.

SECTION 28. Subchapter B, Chapter 11, Tax Code, is amended by adding Section 11.141 to read as follows:

Sec. 11.141. PRECIOUS METAL HELD IN TEXAS BULLION DEPOSITORY. (a) For purposes of this section, "precious metal" has the meaning assigned by Section 2116.001, Government Code.

(b) A person is entitled to an exemption from taxation of the precious metal that the person owns and that is held in the Texas Bullion Depository established under Chapter 2116, Government Code, regardless of whether the precious metal is held or used by the person for the production of income.

(c) Notwithstanding Section 11.14(c), the governing body of

1 a taxing unit may not provide for the taxation of precious metal
2 exempted from taxation under Subsection (b).

3 SECTION 29. Section 11.42(b), Tax Code, is amended to read
4 as follows:

5 (b) An exemption authorized by Section 11.11 or 11.141 is
6 effective immediately on qualification for the exemption.

7 SECTION 30. Section 11.43(a), Tax Code, is amended to read
8 as follows:

9 (a) To receive an exemption, a person claiming the
10 exemption, other than an exemption authorized by Section 11.11,
11 11.12, 11.14, 11.141, 11.145, 11.146, 11.15, 11.16, 11.161, or
12 11.25 [~~of this code~~], must apply for the exemption. To apply for an
13 exemption, a person must file an exemption application form with
14 the chief appraiser for each appraisal district in which the
15 property subject to the claimed exemption has situs.

16 SECTION 31. Sections 2116.009(a), (c), (d), (e), and (f),
17 Government Code, are repealed.

18 SECTION 32. (a) Except as provided by Subsection (b) of
19 this section:

20 (1) this Act takes effect immediately if it receives a
21 vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution; and

23 (2) if this Act does not receive the vote necessary for
24 immediate effect, this Act takes effect September 1, 2017.

25 (b) Section 11.141, Tax Code, as added by this Act, and
26 Sections 11.42(b) and 11.43(a), Tax Code, as amended by this Act,
27 take effect January 1, 2018, but only if the constitutional

C.S.H.B. No. 3169

1 amendment proposed by the 85th Legislature, Regular Session, 2017,
2 authorizing the legislature to exempt from ad valorem taxation
3 precious metal held in the Texas Bullion Depository is approved by
4 the voters. If that amendment is not approved by the voters, those
5 sections have no effect.